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Australia's regulation of commercial use of wildlife: an absence of eco-logic

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AUSTRALIA'S REGULATION OF COMMERCIAL USE OF WILDLIFE:

AN ABSENCE OF ECO-LOGIC

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For Brett and Max

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ABBREVIATIONS

ABARE	Australian Bureau of Agricultural and Resource Economics
ANZECC	Australian & New Zealand Environment & Conservation Council
ARMCANZ	Agriculture & Resource Management Council Of Australia & New Zealand
AVA	Avicultural Federation of Australia
CAMPFIRE	Communal areas management program for indigenous resources
CBD	*Convention on Biological Diversity*
CITES	*Convention on International Trade in Endangered Species of Wild Fauna and Flora*
COAG	Council of Australian Governments
CSU	Conservation via sustainable use
DFAT	Department of Foreign Affairs and Trade
DEWR	Department of Environment and Water Resources
EPBC ACT	*Environmental Protection and Biodiversity Conservation Act 1999* (Cth)
IFAW	International Fund for Animal Welfare
IUCN	World Conservation Union (International Union for the Conservation of Nature)
NRM	Natural Resources Management
NSESD	National Strategy for Ecologically Sustainable Development
OECD	Organisation for Economic Cooperation and Development
RIRDC	Rural Industries Research and Development Corporation
RRAT	Senate Rural and Regional Affairs and Transport References Committee
SUSG	Sustainable Use Specialist Group
TRAFFIC	Wildlife trade monitoring program of IUCN and WWF
UNEP	United Nations Environment Program
WPA	*Wildlife Protection (Regulation of Exports and Imports) Act 1982* (Cth)
WRI	World Resources Institute
WTO	World Trade Organisation
WWF	World Wide Fund for Nature

ABSTRACT

Environmental law responds to a vast array of stakeholders at both the domestic and international level. Where it relates to the often controversial area of the regulation of commercial trade in wildlife, the law is subject to the push and pull of different views about what is 'acceptable' use. Given that these views can be diametrically opposed, depending on the stakeholder or society, the regulation of wildlife trade provides a compelling example of the way philosophical, cultural, political and economic, as well as ecological, concerns find their way into the hearts and minds of legal decision makers.

This thesis draws on the international experience concerning commercial use of wildlife but its focus is the approach of Australia's federal legislature to regulation of the trade. The purpose of my research is to show that significant developments in international environmental law, leading to more widespread acknowledgement of the potential conservation benefits of commercial use of wildlife, have not infiltrated the Australian wildlife regime. I demonstrate this by a focus on what I consider are illogical constraints on Australia's commercial use of wildlife.

Initially environmental law met commercial use of wildlife head on with strict prohibitions on trade. This approach has evolved significantly to the extent that it is now widely accepted that commercial consumptive use of wildlife is a potential conservation tool. The bulk of the world's remaining wildlife exists in developing countries and a prohibitionist approach, often imposed from afar, does not necessarily engage with the cultural, economic and ecological interests of those rural and remote communities in closest proximity to wildlife. Protection has therefore been re-characterised as simply another tool alongside conservation via sustainable use ('CSU'). This acknowledges that environmental management occurs within a world of use and where the greatest threat to wildlife is the loss of habitat such that conservation must compete with financially lucrative but highly destructive uses of the environment. In this context, sustainable use may provide an incentive that competes with more destructive alternative uses.

To illustrate that environmental law may be a social, cultural and political construct as much as it is a response to conservation imperatives, my analysis required examination of a range of influences on the design and implementation of the Australian regime. The thesis begins by working through contributions from conservation biology, philosophy, cultural and political critiques, empirical studies and international and domestic policy documents. These chapters then provide the groundwork for the legal critique which comprises an examination of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES') and the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth)('EPBC Act'). The evolution in the international debate is reflected in the implementation of CITES which has moved from a protectionist regime, concerned with 'threats' from trade, towards greater accommodation of the CSU approach. The Australian regime has not responded to these developments, however, and the EPBC Act's wildlife trade provisions – which came into force in 2001 – have hardly deviated from the legislation they replaced, the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* (Cth).

I then demonstrate both the protectionist focus and the selectivity of the Australian regime by way of an examination of the Commonwealth's approach to live commercial exports of native animals and the international movement of hunting trophies. For decades there has been a prohibition on the commercial export of live terrestrial vertebrates, in the face of ongoing calls to allow, at least on a trial basis, the export of native birds and reptiles for the international pet trade. Successive federal governments have refused to budge on this issue, despite the fact that:

i. native Australian animals, particularly birds, have already made their way into the international trade, as bred and exported by other countries;
ii. Australia at the same time allows the live commercial export of other native fauna, particularly lobsters but also insect and aquatic pets; and
iii. there is a thriving domestic trade in live birds and reptiles between Australia's states and territories.

The second case study, on the federal prohibitionist approach to international movement of hunting trophies, is even more at odds with international conservation thinking. Sport

or safari hunting may present as an unacceptable use of wildlife to many in Australian society yet it is highly lucrative and has been embraced in many countries by those marginal rural communities which manage species attractive to sports hunters. It is also proposed as a viable industry for remote indigenous communities in Australia.

The case studies show that the prohibitionist approach is clearly favoured in Australia as the most politically acceptable as no effort has been made to explain or justify the legislative and policy inconsistencies. Proponents of greater use of wildlife, however, have significant hurdles to overcome, not least an application of the precautionary principle that does not sit easily with the concept of *relative* threats to biodiversity, which is the basis of CSU. The thesis concludes that the influence of non-ecological imperatives have held sway, given the arbitrary divide in protective measures for wildlife that conflicts with not only significant international policy and commentary but the findings of every Australian parliamentary inquiry into the issue. A potential conservation tool for Australia, particularly its more marginal landscapes, is being sidelined by the reluctance of decision makers to engage with commercial use of wildlife in a robust manner. I wish to emphasise, however, that whether CSU could be a positive player in Australian environmental management is not the primary concern of the thesis; my focus is on how environmental legislation can be subject to forces that have no apparent grounding in conservation concerns.